

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

QUAN HING SUN and JUNG LIM,  
*Appellants,*

vs.

EDWARD WHITE, Commissioner of  
Immigration for the Port of San  
Francisco,  
*Appellee,*

## APPELLEE'S REPLY BRIEF

Upon Appeal from the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

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Filed this.....day of September, 1918.....

FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.

# Journal of the American Medical Association

Published Weekly

Volume 117, Number 1, July 1967

Subscription Information: Single Copies 50¢; Annual Subscription \$5.00

No. 3039

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*Appellee,*

### APPELLEE'S REPLY BRIEF.

#### Statement of the Case.

The appellant Quan Hing Sun arrived at the Port of San Francisco, California, on the S. S. "China," March 11, 1916, accompanied by an alleged uncle, Quan Foo. He applied for admission to the United States as the son of a native, basing his right to admission on the grounds that he was the foreign born son of one Quan Hay, a native born Chinese person, and as such was entitled to admission as a citizen of the United States, under Section 1993 R. S. He was given the usual examination accorded to Chinese applicants for admission to the

United States, both under the United States Immigration laws and the Chinese Exclusion Laws, Rules and Regulations and was refused admission by the Commissioner of Immigration for the Port of San Francisco. An appeal was taken from the said Commissioner's decision to the Secretary of Labor, who affirmed the excluding decision of the said Commissioner. Petition was then made to the Southern Division of the United States District Court for the Northern District of California, First Division, for a writ of habeas corpus, which was denied.

### ARGUMENT.

As to the first point raised by appellant, Rule 3 of the Chinese Regulations provides as follows:

“Chinese aliens shall be examined as to their right to admission under the provisions of the immigration law and rules as well as under the provisions of the Chinese-exclusion treaty, laws, and rules. As the former law and rules relate to aliens generally, the status of Chinese applicants must be first determined thereunder; then, if found admissible under the immigration law and rules, their status under the Chinese-exclusion law and rules shall be determined. In order to avoid inconvenience, delay, or annoyance to Chinese applicants through misunderstanding, and in the interest of good administration, examination under both sets of laws and rules shall be made, in the order stated, only at the ports named and in the manner specified in Rule 1 hereof.”

Persons of Chinese descent are examined under the Immigration laws only so far as to determine whether or not they are comprehended within the classes enumerated therein as being excluded from admission into the United States, as provided in Section 3 thereof, which said section applies to Chinese as well as other aliens seeking admission into the United States.

*Looe Shee vs. North*, C. C. A. 9, 170 Fed. 566.

Whether or not a person of Chinese descent applying for admission into the United States as a citizen thereof, is a citizen and therefore entitled to admission as such, is a question of fact, the burden of proving which rests with the applicant. That fact is determined by the method and gauge provided for in the Chinese Exclusion laws and not under the general Immigration laws. It appears from the Bureau record on file as Exhibit "A" in this case, that this method was followed and upon the failure of the applicant to establish his claimed status as a citizen he was refused admission.

As to the second point raised in appellant's brief—that of the abuse of discretion on the part of the Immigration officials in disregarding the evidence of citizenship presented by and on behalf of Quan Hing Sun, counsel dwells at length on what was at that time Rule 9 (Trans. pp. 15, 16, 17) of the Chinese Regulations as they stood when the said Quan Hing Sun arrived at the Port of San Francisco.

It is true that this rule was promulgated by the Department of Labor October 15, 1915, and was in force and binding upon the administrative officers of that department at the Port of San Francisco until some time in April, 1916, when said rule was amended by striking out paragraphs (f) and (g) thereof, and the following substituted therefor:

“The lawful wife of an American citizen of the Chinese race may be admitted for the purpose of joining her husband and the lawful children of such a citizen partake of his citizenship and are therefore entitled to admission. In every such case convincing evidence of citizenship and relationship shall be exacted.”

In affirming the excluding decision of the Commissioner at the Port of San Francisco, the Bureau, on page 52 of its record, uses the following language:

“You are advised that the Secretary has affirmed the excluding decision of your office on the ground *that the relationship has not been established.*”

There is no reference whatever made to any other grounds on which the Commissioner's decision was affirmed.

The Court below, in discharging the writ of habeas corpus (Trans. pp. 32, 33) expressed the following opinion:

“It appears from the return herein, and the records of the Department introduced in support of it that the petitioner, now held for de-

portation, was excluded because the Department was not satisfied that petitioner was really the son of Quan Hay, an American citizen, as claimed. The hearing accorded seems to have been fair, and the findings of the Department under such circumstances are not open to review in this proceeding.

“The writ will therefore be discharged, and the petitioner remanded for deportation.”

It is submitted that no prejudice or unfairness appears in the record and that the facts disclosed therein fully warrant the conclusions arrived at by the Department.

Respectfully submitted,

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